

HOUSE FINANCE COMMITTEE  
March 18, 2021  
1:32 p.m.

1:32:43 PM

CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:32 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair  
Representative Kelly Merrick, Co-Chair  
Representative Dan Ortiz, Vice-Chair  
Representative Ben Carpenter  
Representative Bryce Edgmon  
Representative DeLena Johnson via Teleconference  
Representative Andy Josephson  
Representative Bart LeBon  
Representative Sara Rasmussen  
Representative Steve Thompson  
Representative Adam Wool

MEMBERS ABSENT

None

ALSO PRESENT

Neil Steininger, Director, Office of Management and Budget, Office of the Governor; Representative Zach Fields, Sponsor; Tristan Walsh, Staff, Representative Zack Fields.

PRESENT VIA TELECONFERENCE

Colleen Glover, Director, Tax Division, Department of Revenue; Jason Motyka, Owner, 49th State Brewing Company, Anchorage; Jamie Klaes, Marketing Director, Alaska EXCEL, Anchorage; Michelle DeWitt, Director, Bethel Community Service Foundation, Bethel; Andrew Dunmmire, Attorney, Legislative Legal Services; Megan Wallace, Director, Legislative Legal Services, Alaska State Legislature.

SUMMARY

HB 69        APPROP: OPERATING BUDGET/LOANS/FUNDS

HB 69 was HEARD and HELD in committee for further consideration.

HB 71        APPROP: MENTAL HEALTH BUDGET

HB 71 was HEARD and HELD in committee for further consideration.

HB 76        EXTENDING COVID 19 DISASTER EMERGENCY

HB 76 was HEARD and HELD in committee for further consideration. [Note: meeting was recessed until the following afternoon where the bill hearing continued. See separate minutes dated 3/19/21 for detail.]

HB 128       USE OF INTERNET FOR CHARITABLE GAMING

HB 128 was HEARD and HELD in committee for further consideration.

PRESENTATION: REVERSE SWEEP - OFFICE OF BUDGET AND MANAGEMENT

Co-Chair Foster reviewed the agenda for the meeting.

#hb69

#hb71

HOUSE BILL NO. 69

"An Act making appropriations for the operating and loan program expenses of state government and for certain programs; capitalizing funds; amending appropriations; making reappropriations; making supplemental appropriations; making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska, from the constitutional budget reserve fund; and providing for an effective date."

HOUSE BILL NO. 71

"An Act making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program; making supplemental appropriations; and providing for an effective date."

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^PRESENTATION: REVERSE SWEEP - OFFICE OF BUDGET AND MANAGEMENT

1:34:13 PM

Co-Chair Foster hoped the presentation would help to answer some common questions about the reverse sweep and how it functioned. He advised the presenter to keep the presentation brief, as there were two bills that would also be addressed in the meeting.

NEIL STEININGER, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, introduced the PowerPoint presentation: "Constitutional Budget Reserve Sweep and Reverse Sweep" (copy on file). Turning to slide 2 He indicated that the Alaska Constitution addressed three distinct funds: The Alaska Permanent Fund (PF), (Article 9, Section 15); the Constitutional Budget Reserve (CBR), (Article 9, Section 17); and the general fund (GF). Each of the funds had different restrictions. Specific revenues were deposited into the PF and only the income of the fund could be appropriated. The Constitutional Budget Reserve Fund included money received from the termination of administrative and judicial proceedings involving mineral revenues. He reported that the concept of the sweep came from the CBR. The general fund contained money received from taxes, fees, and other sources not constitutionally directed to the CBR or the PF including the various designated general fund accounts used in the state budget system.

Co-Chair Foster announced Representative Edgmon and Representative Wool had joined the meeting.

Mr. Steininger turned to slide 3 which was a reproduction of Article 9, Section 17 regarding the Constitutional Budget Reserve Fund (CBR). It was added to the constitution in 1990 via an amendment. Subsection (d) pertained to the

sweep and the reverse sweep and outlined the repayment requirement. He read the subsection:

Repayment requirement - "If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law."

Mr. Steininger reported that over the previous decade, the state had drawn a considerable amount from the CBR in order to meet state needs and fill a structural deficit. As a result, the state owed a considerable amount to the CBR which triggered the repayment requirement on an annual basis.

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Mr. Steininger continued to slide 4 to review the repayment requirement commonly known as the "sweep." Between FY 95 and FY 10 the requirement was also triggered. It peaked at a debt of \$5.2 billion in FY 05 which was fully repaid by FY 10. The state's current debt began in FY 15. Presently, the state owed more than \$11 billion to the CBR.

Mr. Steininger reviewed the mechanics of the sweep's execution. The Sweep was effective at midnight on June 30th of each year. Any balance in an account on the night of June 30th would be swept to the CBR. It was reversed through the reverse sweep pending a three-quarter vote of the legislature and a signature of the governor in an appropriation bill. The reversal occurred at 12:01 a.m. on the following day. He explained that because the state's accounting systems did not close exactly at midnight, the state had 2 months to do clean-up. It ensured that all accounting transactions were in the right place and were made to the correct funds before closing out the fiscal year on August 31st on an annual basis.

Mr. Steininger continued that There being NO OBJECTION, it was so ordered. state accounted for all payroll and bills that were pending and being received. The sweep transaction would not be executed until the administration was finished closing out the year and following the completion of an audit and a review by the Legislative Finance Division. As

they prepared the annual comprehensive financial report, they looked at the balances of the account and determined the amounts that were actually in the accounts and subject to the sweep at midnight on June 30th. The mechanics of the sweep actually happened much later than June 30th.

Mr. Steininger reviewed how the state determined which funds were subject to the sweep. The state did not have much guidance on how to interpret the constitutional provision. He suggested that a test had to be applied to different funds to determine whether the sweep should be applied to them and whether their amounts would appear in the annual financial report. Funds that were subject to the sweep were funds the legislature could appropriate and required further legislative appropriation. Funds that listed purposes for which the money could be used but still required legislative appropriation were also subject to the sweep. The rule came down to the availability of appropriation by the legislature.

Mr. Steininger reviewed items that were not subject to the sweep including money and funds that were already validly appropriated - obligated funds. For example, the sweep would not defund an existing capital project. Also, federal funds were not subject to the sweep. Other trust funds with an obligation behind them such as the public employee's retirement fund or other funds that could only be used for a specific stated purpose under law or held in trust were not subject to the sweep. Additionally, donations were not subject to the sweep, because they usually came with strings attached by the person making the donation. Accounts that were subject to expenditure without appropriation, capitalized funds, were not subject to the sweep as well. Receipts subject to refund were not subject to the sweep including the Alaska Marine Highway System (AMHS) receipts and the University of Alaska (UA) tuition receipts.

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Mr. Steininger discussed the sweep reversal on slide 6. He explained that the sweep reversal was an action taken annually in the state's operating budget or capital budget depending on where it fell in the legislative process. In the current year, the reverse sweep proposal was in Section 28(a) in the FY 22 governor's proposed operating budget. The language on the slide replicated the language

in the budget implementing the sweep. The language stated that any monies swept from a fund or sub fund of the general fund or an account within the general fund were appropriated back to the funds from the CBR. Technically, it was a draw from the CBR and required a three-quarter vote of the legislature. The intent of the appropriation was to prevent programmatic problems that could be caused by the emptying of the various funds, sub funds, and accounts within the general fund.

Mr. Steininger advanced to slide 7 to discuss the impacts of the sweep. If the sweep reversal was not enacted there were 3 categories of impacts. There were high impact funds, funds that did not have projected revenues for FY 22 including the scholarships coming from the Higher Education Fund and any appropriation made from the Power Cost Equalization (PCE) Fund. Both funds did not receive revenues on a fiscal year basis. Rather, they were savings accounts set aside in prior years by the legislature that produced income that provided for the cost of certain state programs including the PCE Program and the scholarship program.

Mr. Steininger explained that medium impact funds were funds that would receive revenue in the following fiscal year. There would be money to back some of the appropriations. However, the revenue was less than the amount being appropriated in FY 22. Some of the programs included the Alcohol Safety Program, Chronic Disease Prevention within the Department of Health and Social Services (DHSS), substance abuse grants, the Domestic and Sexual Assault Prevention Program, AMHS operations, and the Spill Prevention and Response (SPAR) Program within the Department of Environmental Conservation (DEC). All of the programs he mentioned had revenues coming in the following fiscal year. However, the revenue was not sufficient to cover all of the appropriations.

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Representative Josephson brought up the SPAR account. He thought the response portion of the funding was already fully appropriated, as it had to be available for use at a moment's notice. He was uncertain the item should be on Mr. Steininger's list.

Mr. Steininger thanked Representative Josephson for his question. He responded that there was a strange technicality to the way the SPAR fund was filled. The Spill Prevention and Response accounts were filled with surcharges on fuel. However, during the fiscal year, the surcharges were held within an account in the general fund and in the following fiscal year the legislature appropriated the amount collected in the prior year. The appropriation into the account occurred on July 1st. The sweep occurred on June 30th and was subject to a holding account where revenues were placed. He continued that because of the way the money was appropriated into the SPAR account, the response account was not subject to the sweep. It was the revenue collections from the year that were about to be deposited into the fund that were subject to the sweep. The account itself was not subject to the sweep, as it was fully obligated. However, revenues going into the account were impacted by the sweep. There were areas where there might be unforeseen circumstances in which a fund would be impacted by the sweep indirectly.

Co-Chair Foster asked members to hold their questions until the presentation was finished.

Mr. Steininger indicated there were funds that experienced no real immediate impacts such as funds without FY 22 appropriations reliant on existing balances. There were holding accounts for revenues used for specific purposes but did not have ongoing reliance on a specific program.

Mr. Steininger looked at a non-comprehensive yet high-level summary of some of the impacts if the sweep occurred but was not reversed in FY 22. The table reflected dollar value shortfalls of several funds where there would be significant impacts to the FY 22 budget. He had already reviewed the impacts to the PCE fund and the Higher Education Fund. There were use taxes such as tobacco use education and cessation that were directed towards prevention and public health, or things that addressed domestic violence or substance abuse. There were also industry impacts such as the Commercial Fisheries Entry Commission Fund where there would be a shortfall in the FY 22 budget without a reverse sweep. He noted that the impacts would be mitigated with the enactment of Section 28(a) of the governor's proposed operating budget. He concluded his presentation.

Co-Chair Foster had wanted a refresher on the topic. He thanked Mr. Steininger for his presentation. He was glad to see the governor had included the sweep language in his budget.

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Representative LeBon referred to slide 7 and the Alaska Housing Capital Corporation Account. He wondered if the fund was not subject to the sweep because it was considered a capitalized account.

Mr. Steininger responded that the fund was subject to the sweep but without any material impact to the FY 22 budget. The capital corporation account was an account at Alaska Housing Finance Corporation (AHFC). However, they were not able to spend from it without further appropriation and did not meet the other categories that would take it out of the scope of the sweep as he viewed the guidelines.

Representative LeBon clarified that it would be subject to the sweep. He asked for an example of a capitalized account not subject to the sweep.

Mr. Steininger responded that a good example would be the vaccine assessment account - the account that funded the purchase of vaccines. The state received payments from entities and pooled them together to purchase vaccines. The state received payments as general fund revenue, then it capitalized the account and allowed DHSS to spend without an appropriation to make bulk purchases of vaccines to keep costs down.

Vice-Chair Ortiz referred to slide 4 regarding funds subject to the sweep. He asked if the state had always swept funds that were subject to the sweep in 1995. Mr. Steininger responded affirmatively but only on paper. He elaborated that no actual money was moved from account to account. The funds were not physically moved across accounts.

Vice-Chair Ortiz asked if there had been any broadening of the funds subject to the sweep. Mr. Steininger responded that the funds subject to the sweep had shifted with different understanding over time. In prior years (1995 to 2010) the sweep had been reversed in a timely manner. Several years ago, there was uncertainty as to whether the



sweep would be reversed. In order to ensure the that the provision was implemented correctly, the state needed to review the issue with greater rigor.

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Vice-Chair Ortiz asked if the review had been done by each administration. He specifically asked about whether the PCE Fund and the Higher Education Fund had always been swept. Mr. Steininger responded that they were more recently a part of the sweep. He noted they had not necessarily been considered or reviewed with rigor in the past.

Representative Josephson relayed that in the case of Hickel vs. Cowper the implication was that the PCE Fund was not sweepable according to the Legislature's legal counsel. However, the administration disagreed. He believed that if the PCE Fund was swept permanently, litigation would result. He asked Mr. Steininger if he agreed with the idea of crafting a law defining the sweepable accounts. He noted the CBR provision stated, "As prescribed by law."

Mr. Steininger commented that the most recent attorney general's opinion on the matter was his reference point as the OMB Director. The opinion determined that PCE was sweepable based on the analysis of the information available. In response to Representative Josephson's question about whether there should be a law, he thought it would be helpful in guiding interpretation. Currently, there was little criteria available to determine sweepability. He suggested that there were many different funds impacted by the sweep. The policy position of whether to reverse the sweep and its impacts on the state budget and state programs did not really change depending on the outcome of some of the arguments about the higher profile funds. The importance of the budget item being discussed did not change based on a determination. It was still an important budget item to enact for the health of state operations. He thought it was an important thing to note as the funds were being discussed.

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Representative Carpenter referred to slide 8. He asked about the programs represented by the dollar figures. He wondered if the legislature had created a program funded by a specific account which would go unfunded without a

reverse sweep. The legislature had the option to fund the program with different funds. He asked if he was correct.

Mr. Steininger replied that if, for example, instead of using the Tobacco Use Education and Cessation Fund for \$2.7 million an unrestricted general fund appropriation was made to the programs, the impact would go away. It would require an appropriation of \$2.7 million UGF.

Representative Carpenter suggested that if a program was important enough, it would make sense to fund the account with UGF into perpetuity. He wondered why the state did not just do it the way he was suggesting. Mr. Steininger thought it was a policy decision for the legislature to make.

Representative Carpenter believed the legislature was unable to do so based on the Alaska Constitution. It would be a dedicated fund. They were designated funds because they had to be reappropriated every year. The legislature did not have the authority to make it a dedicated fund. Mr. Steininger clarified that the policy decision would be which fund to use to support the program: the Tobacco Education and Cessation Fund or the general fund. The policy for what fund to use for any given appropriation was up to the legislature.

Representative Carpenter asked what percentage of funds that were swept were on the list. Mr. Steininger indicated there was a list in member's packets that listed the total amounts of funds that were swept at the end of FY 20 and totaled about \$1.5 billion.

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Representative Edgmon indicated that the reverse sweep vote on the floor, which required a three-quarter vote of 30 members in the House and 15 members in the Senate, could prevent the legislature from getting its job done in a timely manner. He indicated that the SBR was established in 1986, and the CBR (a place to park billions of oil settlement dollars) was established in 1990. The accounts were created in an era of insufficient revenues, several budget cuts, and the Permanent Fund Dividend had to be paid. At the time oil prices were about \$8 or \$9 per barrel. The Constitutional Budget Reserve was a vault where legislators could not get their hands on it without a super

majority vote. He requested an opportunity to look at the history of the funds and why they came to be. He appreciated the presentation but noted that no one really understood the concept.

Co-Chair Foster liked Representative Edgmon's suggestion concerning a historical lookback.

HB 69 was HEARD and HELD in committee for further consideration.

HB 71 was HEARD and HELD in committee for further consideration.

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RECONVENED

Co-Chair Merrick called the meeting back to order and invited the bill sponsor to begin his presentation.

#hb128

HOUSE BILL NO. 128

"An Act relating to charitable gaming online ticket sales and activities."

[2:07:42 PM](#)

REPRESENTATIVE ZACH FIELDS, SPONSOR, appreciated the opportunity to introduce his bill to the committee. He explained the purpose of HB 128. The bill made one simple change - it made regulations that allowed for the sale of charitable gaming raffle tickets online and in-person during the pandemic permanent. Passage of the bill was needed to ensure Alaska's many non-profits could continue to raise money into the future. Time was of the essence, as some of the non-profits were currently planning events during the ongoing pandemic. A local business owner had suggested the bill because the sort of raffles online were necessary to raise funds for the Anchorage Duck Race which benefited Excel Alaska and many other non-profits.

Representative Fields continued that while the concept was proposed to him by an Anchorage business owner, charitable

raffles occurred throughout the state. He provided several examples including the Great Alaska Duck Race in Anchorage, the Kuskokwim Ice Classic in Bethel, and the Nenana Ice Classic. He noted some of the beneficiaries of the raffles including the American Cancer Society, KUAC Radio in Fairbanks, and the Public Library. The Fairbanks Chamber of Commerce had a rubber ducky race, and many sportsman's groups used raffles to raise money.

Representative Fields noted that the raffles not only benefited individual groups but also put more money into Alaskan communities for management and conservation. He mentioned that the Kenai River Sportfishing Association (KRSA) was one of the many groups that purchased raffle tickets and was an example that illustrated why it was important to extend the regulations. He detailed that in the current year KRSA sold tickets online in addition to in-person. Even though the raffle tickets were available in-person at many sporting goods stores like Cabela's, they sold the majority of tickets online. As a result he thought that the rules needed to remain in place for Alaska's charities to survive during a pandemic.

Representative Fields also suggested that by putting the regulations in place permanently, the state would raise more money for very important functions longer term. It made sense to make online raffle sales permanent. He was available for questions.

Representative LeBon spoke with the Fairbanks Chamber of Commerce who supported the bill. He also spoke with one of the pull tab operators in his district who had sold tickets online which boosted his business and indirectly benefited non-profits. He wondered if a provision was included that would ensure that tickets were sold to eligible Alaskans. He wondered how to address the issue.

Representative Fields reported that the bill simply made permanent the same framework put in place by the governor which contained the requirement.

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Representative Rasmussen asked if there was a reason why the state would not want people from outside of Alaska to purchase raffle tickets that benefited Alaskan non-profits. Representative Fields responded that it was a topic of

conversation he had had with some groups. He believed the issue would be addressed to everyone's satisfaction as the bill progressed.

Representative Wool asked if pull tab activity was allowed online. Representative Fields indicated that pull tabs would not be sold online. He invited his staff to respond in more detail. The Department of Revenue (DOR) was also available online.

TRISTAN WALSH, STAFF, REPRESENTATIVE ZACK FIELDS, answered that the language that was adopted followed HB 76 [Legislation which passed in 2021 regarding extending the Covid 19 disaster emergency] that was put forward by the Department of Law and in the bill before the other body. The Department of Revenue might be able to speak to the reason pull tabs were not included in the original bill.

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COLLEEN GLOVER, DIRECTOR, TAX DIVISION, DEPARTMENT OF REVENUE (via teleconference), explained that the initial language that went into the emergency declaration, including some of the public health orders, were geared towards online games, raffles, derbies, and classics. Pull tabs were not included. It would open up several issues about electronic pull tabs and other issues that required a larger discussion. The division wanted to limit it to something easy to manage at the time.

Representative Wool did not personally support online pull tabs and was glad it was not included. He did not see charitable gaming in the bill. He thought the bill related to raffles or lotteries. Representative Fields responded that it was a different section in statute, AS 05.15.690. Vendors were not affected by the bill. The underlying statute differentiated between the types of charitable gaming operators.

Co-Chair Merrick indicated that the committee would be hearing from invited testimony.

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JASON MOTYKA, OWNER, 49TH STATE BREWING COMPANY, ANCHORAGE (via teleconference), introduced himself and reported having businesses in Anchorage and Denali Park. He was the

treasure of the downtown community council and volunteered with Excel Alaska and other non-profits throughout the state. He relayed that at the start of the pandemic his organization supported a number of non-profits that had events at his facilities to try to raise money for various organizations. It became apparent that all of the organizations and their fundraising efforts would likely come to a halt which occurred. He reached out to Representative Fields and Senator Begich to see if there was anything the council could do to keep the events going and expand them. They quickly facilitated businesses being able to operate during the pandemic. He increased sales significantly and expand the operation throughout the state. The effort was tremendous success which brought in a significant number of non-profits into a race held in Downtown Anchorage. He reported that over \$100,000 was raised for organizations to utilize.

Mr. Motyka continued that the idea of changing the rule permanently was important given the uncertainty of what would happen to public events. He also pointed out that Alaska needed to adapt to rules that other states had in place. Online gaming platforms were being built across the country. The technology was more secure and accurate for tracking gaming transactions than was currently required. As technology advanced and Alaskan organizations understood how to use the platforms to reach a greater audience, fundraising would change. He thought it was important to distinguish between pull tabs and the events currently being discussed. He argued that it opened up different problems if pull tabs were included. The bill provided tremendous benefits to organizations which allowed the state to track changes more accurately into the future.

Mr. Motyka agreed with Representative Rasmussen's idea of selling to people outside of Alaska. It was important to note that when the race in Anchorage was started originally, the idea was to sell tickets to tourists because of the number of visitors Alaska had each year. He agreed with the prospect of using tourist dollars to help support Alaska's non-profits. He thanked the committee.

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Representative Rasmussen thought that as long as the non-profits benefitting from internet raffle ticket sales

were Alaskan, tickets should be available for anyone inside and outside of Alaska.

Representative Wool commented that certain raffles were limited by the number of tickets available. He asked whether restrictions being eased would result in a decrease in foot traffic because of the fundraisers being conducted online. He wondered about the potential impacts of moving things to an online platform.

Mr. Motyka thought the old way of selling, tracking, and keeping raffle tickets was inefficient. The reality was that people wanted to get together to socialize and participate in events. However, he thought the technology aspect created far more efficiency for organizations for in-person and online events. He argued that at some point organizations would need the tools to keep up with the rest of the country in terms of the use of online platforms for charitable fundraising efforts.

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JAMIE KLAES, MARKETING DIRECTOR, ALASKA EXCEL, ANCHORAGE (via teleconference), explained that her employer was a non-profit organization in Anchorage located on the Alaska Pacific University Campus. Alaska Excel provided educational opportunities to rural students in grades 7-12 and typically served about 600 students per year. It did not make sense to her to sell online tickets to people outside of Alaska. The current regulations allowed non-residents to purchase tickets if they were in Alaska. The current regulations also allowed people to buy tickets over the phone from the Lower 48. She mentioned the Alaska Airmen's Association giving away an airplane every year. She indicated that nine times out of ten the winner was someone from the Lower 48.

Ms. Klaes relayed her support for HB 128, as there were many benefits to conducting charitable gaming online. Her organization hosted the Great Alaska Duck Race in 2019. They sold paper tickets per the regulations and generated approximately \$30,000. In 2020, her organization hosted the event again. Because of the regulation changes, they sold tickets online and generated over \$100,000 and included 10 additional non-profits from across the state who also benefited from the proceeds. Alaska Excel expanded its reach and collaborated with organizations as far as

Utqiagvik which would not have happened without being online. She noted that the Great Alaska Duck Race event took a substantial amount of time and energy to host. She suggested that if it was limited to selling paper tickets again, her organization would have to take a serious look at whether it was worth the effort.

Ms. Klaes reported that eleven other states allowed for online gaming. The American Gaming Association indicated that in the United States it was a \$240 billion business and employed 1.7 million individuals. She argued that paper tickets were limiting the ability to generate revenue. They were more difficult to keep track of and were more time-consuming. She found from using the online ticket system compared to paper tickets, it was easier to track, it took less time, and data collection was streamlined. With the temporary change in the prior year, Alaska Excel was able to include Alaskans from all across the state. She thought rural communities felt more connected to events happening in Anchorage and Fairbanks. She spoke about growing up in rural Alaska and feeling isolated from events taking place in other parts of the state. She reiterated her support for HB 128.

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Representative LeBon referred to Section 2 of the bill that asked for verification of the legal age of the purchaser and their physical presence in the state. He asked how to protect the non-profit organizations from exposure if a ticket was sold to an underaged person or a person in an unapproved location. Representative Fields responded that the language could be tweaked to ensure that non-profits did not face an impossible burden. Other states had adopted such language. He agreed with the notion of accepting someone's money even if they were not from or in Alaska.

Representative Rasmussen would appreciate the opportunity to put forth an amendment to allow for out-of-state ticket purchasing. Representative Fields would look forward to working with her on an amendment.

[2:26:57 PM](#)

MICHELLE DEWITT, DIRECTOR, BETHEL COMMUNITY SERVICE FOUNDATION, BETHEL (via teleconference), reported that her organization sponsored the Kuskokwim Ice Classic and fully



supported the bill. She elaborated that the ice classic was a small event highly localized in Bethel. Alaskans tended to be familiar with the Nenana Ice Classic, a similar contest. The Kuskokwim Ice Classic was a contest where customers guessed the month, day, and time of breakup of the Kuskokwim River and had a very high regional presence, especially along the Kuskokwim. The revenues from the contest were dedicated to non-profit groups that provided services in the community of Bethel and along the river from Aniak to Kwigillingok. Most groups were youth groups such as the local youth dance group, the local swim program, and the youth violence prevention group. In pre-Covid times, youth groups would sell tickets in stores to earn money for their clubs or groups.

Ms. Dewitt reported that over the years the foundation had received feedback about purchasing guesses online. There was a high demand for online purchasing. She had to turn folks away in terms of guessing online. People wanted to be able to participate and have access on their own timeline. She argued that online purchasing allowed for keeping the control for submitting guesses online in the hands of customers instead of relying on a volunteer to write down and submit a significant amount of data on a guess accurately.

Ms. Dewitt reported that in the prior year, due to the pandemic, the ice classic had to pivot at the last minute to phone sales only. It escalated the need to move to an online format. Implementing the ice classic by phone as the only sales strategy was an enormous burden. It had significant inefficiencies with a high risk for errors. There was also a huge decrease in sales. She reviewed the cumbersome process of a phone sale providing the detailed information collected from the caller by the volunteer answering the call. She noted that the volunteers worked from home which meant the organization had to collect all of the forms associated with ticket sales, sort them, and conducted a fail-safe check. She reported that the process occurred over 6000 times in the prior year. She reiterated that the antiquated process currently being used did not make sense based on the technology that was available.

Ms. Dewitt opined that HB 128 offered a solution for the issue. It would allow customers to participate in online sales, keep people safer, reach more customers, and allow for built-in efficiencies with the utilization of current

technologies. She highly supported the bill. She addressed some of the questions regarding Alaska-based sales versus sales outside of the state. She had hired an attorney 5 years prior to closely examine the statute and provide some advice. The guidance she received was that much of the burden was on the customer to meet the requirements. She would also support an amendment that would clarify the issue taking the vagueness out of whether a person had to be an Alaskan in Alaska. She urged members to support the bill.

Co-Chair Merrick would be hearing the bill again in another meeting.

HB 128 was HEARD and HELD in committee for further consideration.

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AT EASE

[2:35:55 PM](#)

RECONVENED

#hb76

HOUSE BILL NO. 76

"An Act extending the January 15, 2021, governor's declaration of a public health disaster emergency in response to the novel coronavirus disease (COVID-19) pandemic; providing for a financing plan; making temporary changes to state law in response to the COVID-19 outbreak in the following areas: occupational and professional licensing, practice, and billing; telehealth; fingerprinting requirements for health care providers; charitable gaming and online ticket sales; access to federal stabilization funds; wills; unfair or deceptive trade practices; and meetings of shareholders; and providing for an effective date."

[2:35:59 PM](#)

Co-Chair Merrick indicated the committee would be taking up amendments for HB 76. There were 7 amendments that had been submitted. She reviewed a list of people available online.

Representative Josephson MOVED to ADOPT Amendment 1 (copy on file):

Page 1, line 2, following "pandemic;":  
Insert "approving and ratifying declarations of a  
public health disaster emergency;"

Page 3, line 21, following "EMERGENCY;":  
Insert "APPROVAL, RATIFICATION, AND"

Page 3, line 22, following "EMERGENCY.":  
Insert a new subsection to read:  
"(a) The declarations of a public health disaster  
emergency issued by the governor on November 15,  
2020, December 15, 2020, and January 15, 2021,  
are approved and ratified."

Reletter the following subsections accordingly.

Page 3, line 28:  
Delete "(a) "  
Insert "(b) "

Page 4, line 5:  
Delete "(b) "  
Insert "(c) "

Page 11, line 7:  
Delete "If this Act takes effect after February  
14, 2021"  
Insert "(a) Except as provided in (b) of this  
section"

Page 11, following line 8:  
Insert a new subsection to read:  
"(b) Section 2(a) of this Act is retroactive to  
November 15, 2020."

Representative Carpenter OBJECTED for discussion.

Representative Josephson reviewed the amendment. He hoped that the amendment would be agreeable to every branch of government. It did what had been done in the prior year in March. The legislature had been sued because there was a belief that the revised program legislative (RPL) process had not been followed properly. As a result, the legislature essentially blessed the governor's first batch of RPLs. His amendment was analogous. According to the legislature's counsel, the governor's extension of the

emergency declaration after November 15th was not within his power. The amendment acknowledged that the legislature had the power by ratifying the governor's extension. He thought the governor would like the amendment.

Representative Carpenter thought the legislature failed to act in the past, and it should be a part of the past. He did not believe the amendment was necessary.

Representative Edgmon spoke in strong support of the amendment. He thought it was apparent in the prior November, December, and January before the convening of the legislature, that there were impediments associated with bringing the legislature together to declare a disaster declaration required by law. The governor decided to make the declaration under the circumstances. He thought the governor had made the right decision because of the restrictions resulting from Covid. He gave additional reasons behind not being able to come together as a legislature prior to the beginning of session. He agreed with the maker of the amendment that it also provided cover for the governor if there was any kind of litigation surrounding the issue in the future.

Representative Rasmussen asked Mr. Dunmire to speak to what the amendment would do to the legislature's ability to bring forth a lawsuit and whether it protected the governor from a lawsuit.

[2:41:43 PM](#)

ANDREW DUNMMIRE, ATTORNEY, LEGISLATIVE LEGAL SERVICES (via teleconference), was not prepared to discuss the issue. He could look into it and get back to the committee.

Representative Rasmussen asked Mr. Dunmmire to speak to the function of the amendment. Mr. Dunmire responded that the amendment would put the legislature's stamp of approval on the three disaster declarations that the governor made in November [2020], December [2020], and January [2021] during the interim period when the legislature was not in session. The law, as it was currently written, allowed the governor to declare a disaster. However, it was up to the legislature to extend it. In the current situation the governor made 30-day extensions in the interim when the legislature was not in session.

Representative Rasmussen asked if the amendment was effective regardless of language about an emergency declaration in any amended version of the bill. In other words, if the legislature took the language out that was currently calling a situation an emergency declaration, would the amendment accomplish the same thing. Mr. Dummier responded that it would accomplish the same thing because it would ratify the disaster declarations made in the past and not anything that was currently taking place.

Representative Wool commented that the past was relevant. He thought the amendment provided good cover.

Representative LeBon thought an affirmative vote on the amendment would be recognition that the legislature had not completely ceded its authority on the action by the governor. It would also allow the whole body to consider the question once it reached the house floor as to whether the retroactive authority was appropriate.

2:45:00 PM

Co-Chair Foster remarked he was hearing the upside to the amendment and would be supporting it.

Representative Carpenter had a previous conversation with Megan Wallace about the bill. He was concerned with the retroactive nature of the amendment and the bill. There was a Supreme Court case law that supported the use of retroactivity in bills. There was also some exceptions and constraints that accompanied retroactivity. The retroactive application of the extension, as long as it did not impact substantive rights, was likely okay. However, if it impacted substantive rights, the legislature might be in legal jeopardy. He had discussed the issue with Ms. Wallace and would be happy to share the legal opinion with the committee. He thought the legislature might be opening itself up to some scrutiny.

Representative Rasmussen agreed with Representative Carpenter's hesitation about lines 4-6 on page 2 of the amendment. She wanted to offer a friendly amendment and asked if the maker was willing to remove the section keeping everything prior to it. In other words, her conceptual amendment to the amendment would delete lines 4-6 on page 2.

Representative Josephson was not willing to remove the section.

[2:47:40 PM](#)

AT EASE

[2:48:06 PM](#)

RECONVENED

Co-Chair Merrick asked Representative Carpenter if he maintained his objection.

Representative Carpenter MAINTAINED the OBJECTION.

[A roll call vote was in progress when Representative Johnson expressed confusion about what was being voted on.]

[2:49:01 PM](#)

AT EASE

[2:49:52 PM](#)

RECONVENED

Representative Josephson restated his motion to move Amendment 1.

Representative Carpenter OBJECTED.

Representative Josephson offered a brief summary of the amendment.

Representative Rasmussen clarified that the amendment retroactively dated the entire bill in front of the committee to November 15, 2020.

[2:51:01 PM](#)

AT EASE

[2:52:48 PM](#)

RECONVENED

Co-Chair Merrick asked Representative Josephson to clarify.

Representative Josephson thought the retroactivity extended to Section 2(a) of the bill. It was designed to merely cover the extensions after the expiration.

Co-Chair Merrick asked if Representative Johnson had any questions. Representative Johnson responded in the negative.

Representative Carpenter had a legal opinion from Megan Wallace which he would distribute to members. He read a portion of the opinion:

"Retroactive application of the disaster extension does not appear to affect any substantive rights and is, therefore, likely to be upheld if challenged."

Representative Carpenter thought it sounded like the amendment would support what Representative Josephson was trying to do in his amendment. However, he thought Ms. Wallace's opinion around a substantive right might be inaccurate. There were varied substantive rights of people in Alaska who were unable to travel for certain reasons. Therefore, he thought the legislature was opening itself up to potential litigation by taking retroactive action.

Representative Josephson thought Representative Carpenter had stated that the legislature's lead counsel had problems with the substantive application of his amendment. However, Representative Carpenter was currently reading it as if she did not have problems with it. He wanted to clarify whether the legislature's lead counsel had problems with his amendment.

Representative Carpenter thought Ms. Wallace opined that there was not a problem. However, her argument as to why did not pass muster.

[2:55:21 PM](#)

AT EASE

[2:59:23 PM](#)

RECONVENED

Representative Josephson indicated Amendment 1 was before the committee. He had read the legal opinion by the Legislature's lead counsel. She indicated that the amendment was proper, and a court was likely to uphold an extension with a valid retroactive provision. The provision contained in the measure the legislature used to extend the disaster declaration could be done retroactively. It was not what Representative Carpenter stated the first time he

spoke on Representative Josephson's amendment. If the chair was inclined to roll the amendment to the bottom, he would not oppose it.

Co-Chair Merrick thought Megan Wallace of Legislative Legal Services was online.

Co-Chair Merrick rolled Amendment 1 to the bottom of the amendment packet.

Representative Josephson MOVED to ADOPT Amendment 2 (copy on file):

Page 10, lines 16 - 21:  
Delete all material.

Renumber the following bill sections accordingly.

Page 10, line 31:  
Delete "5 - 12"  
Insert "5 - 11"

Representative Rasmussen OBJECTED for discussion.

Representative Josephson reviewed the amendment. He indicated that SB 241, which passed in March 2020 and extended the Covid-19 declaration, had two provisions related to liability in the context of Covid. The provisions were in Section 4 and Section 32. The provision in Section 4 contained standing orders that Dr. Zink or her designee would issue orders on how medical providers would mitigate their activities to protect patients. The current bill did not contain such a provision. Section 32 of SB 241 contained a provision exclusive to personal protective equipment (PPE) and liability around defective PPE. The same section was not contained in the legislation being considered. Instead, there was language, which he thought was problematic, from SB 56 [Legislation introduced in 2021 regarding the extension of the Covid-19 disaster declaration]. He continued that when the House readopted the language in HB 76, it needed to be remedied. He read from a portion of the bill on page 10. He was concerned that the bill extended liability protection to corporations. He was also concerned because the language suggested that if a doctor did anything wrong that did not comply with an order, proclamation, or declaration, they would not be held liable. He was proposing to return to the



background liability law, which meant returning to the way liability was handled prior to Covid. He proposed to delete the language in Section 12 of the bill.

Representative Rasmussen asked if the amendment had any impact on somebody at the grocery store who unknowingly spread Covid-19. Representative Josephson did not know what the law and liability would be in the context of someone unknowingly spreading Covid. Obtaining proof was the issue and liability would not likely attach.

[3:05:26 PM](#)

Representative Rasmussen referred to Section 12 of the bill. She asked if civil liability extended to people accountable for unknowingly passing on Covid-19. She wanted to better understand the purpose of the section.

MEGAN WALLACE, DIRECTOR, LEGISLATIVE LEGAL SERVICES, ALASKA STATE LEGISLATURE (via teleconference), asked the representative to repeat her question.

Representative Rasmussen restated her question.

Ms. Wallace replied that the civil liability protection in the bill covered a person for action taken on or after February 14 [2021] and before the effective date of the act that did not comply with an order, proclamation, or declaration adopted by the governor. It meant that any person that acted between February 14, 2021 (when the declaration initially expired) and the effective date of the bill, would not be held liable.

Representative Rasmussen asked if the provision would include travelers coming to Alaska without testing. Ms. Wallace responded that testing was a recommendation rather than a mandate and was completely voluntary. She did not want to speculate that definitively a person would not be held liable if they knowingly had Covid and engaged in reckless conduct.

[3:09:36 PM](#)

Representative Josephson asked, if the legislature were to pass the bill with the language contained in the amendment, whether the declaration would be the legislature's or the governor's since the governor did not unilaterally issue

the declaration. Ms. Wallace replied that if the legislature were to act on the bill it would be an extension of the governor's extension. Under Title 26 the disaster act did not specifically provide for a legislative disaster. In her opinion it would be an extension of the governor's disaster declaration.

Representative Josephson clarified that the amendment was more generous to parties that might harm other people by spreading Covid-19 during the gap period between February 14, 2021, to the effective date of the act. He mentioned SB 241. Ms. Wallace did not have the language of SB 241 in front of her, however she confirmed that the language was narrower.

[3:12:21 PM](#)

Representative Wool understood the gap between February 14, 2021, and the effective date of the bill. He asked where the civil liability clause was in the bill. He provided a hypothetical scenario. He wondered if there was any protection for a business. He was concerned with frivolous lawsuits.

Ms. Wallace responded that there was no other liability protection currently in the legislation. Absent the clause they were discussing, a claim would have to be adjudicated through the court system based on the current set of rules and expectations of conduct. Any kind of policy decision or desire to extend liability protection would have to be included or made as part of a separate piece of legislation.

Representative Wool asked if the amendment language only covered the gap period. Ms. Wallace confirmed the amendment only covered the gap period. Because the bill was retroactive, it made it clear that if someone exercised conduct within the gap period, they would not be held liable for the conduct.

[3:16:14 PM](#)

Representative Wool commented that there were other amendments the committee would be considering in the meeting. He referenced an amendment that provided immunity from liability. If the amendment were included in the bill and the gap period was removed, there might be increased

vulnerability for a business after the bill passed. Ms. Wallace did not understand Representative Wool's question. Representative Wool restated his question and referenced Section 12 of the bill.

Ms. Wallace clarified that the intent of section 12 and the liability provision being discussed a person would not be held liable during the gap period at a time that a mandate or order was being issued. She indicated the language clarified that a person would not be liable in the gap period. Representative Wool thanked Ms. Wallace.

Representative Carpenter asked, in talking about liability protections, whether she was talking about rights that were considered substantive. Ms. Wallace explained that when talking about liability or liability protection, there could be several liability issues, particularly concerning the uncertainty of people raising claims against other persons or businesses after contracting Covid. She did not think that substantive rights violations were being discussed. They would fall under the category of constitutional issues.

Representative Carpenter thought civil liability was being discussed and Ms. Wallace was excluding civil rights. Ms. Wallace clarified that the civil liability language in the bill protected conduct that either complied or did not comply with an order, proclamation, or declaration. A person always maintained the power to raise a constitutional violation and challenge. Someone might assert that liability protected them. She was articulating that the difference between certain kinds of liabilities and those that involved substantive rights were not one and the same.

Representative Carpenter argued that a substantive right regarding the Supreme Court's decision would include some sort of constitutional right. Ms. Wallace's recommendation to the committee, through her opinion given to him, specifically stated that retroactive application of the disaster extension did not appear to affect any substantive rights and was, therefore, likely to be upheld [in court]. The committee was discussing things the legislature thought it needed liability from that most definitely could be some substantive rights issues. He commented that there was some circular reasoning taking place that might put the

legislature in jeopardy. He felt he had to point out retroactivity as being a cause.

3:22:59 PM

Ms. Wallace replied that the civil liability provision in the bill was intended so that if the governor issued a subsequent order or proclamation, it would not be used as a basis for what conduct someone should have undertaken in the gap period. It meant that a person would not be held to the standard of an order that was not in place at the time they acted. Absent the language, someone might argue that they should not have taken an action because it was not permissible under an order not in place. Her comments were focused on the liability language in Section 12. Her opinion was that retroactivity and substantive rights were separate issues.

Representative LeBon asked how gross negligence played into civil liability in the current discussion. If someone made a good faith effort to follow best practices but ended up acting with gross negligence, he wondered if there would be civil liability for the person. He suspected the answer was no. He asked if he was accurate. Ms. Wallace replied that the language in section 12 was currently drafted broad enough that it did not distinguish between negative and grossly negative conduct.

Representative LeBon thought that if a person was intentionally misbehaving there would still be a potential for wrong doing even if the committee passed the amendment.

Representative Josephson thought Representative Carpenter was referring Section 12 which he thought related more to tort. He provided a hypothetical scenario and asked if it fit the meaning of Section 12.

Ms. Wallace responded in the negative.

Representative Rasmussen MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Edgmon, Josephson, Ortiz, Foster

OPPOSED: Johnson, LeBon, Rasmussen, Thompson, Wool, Carpenter, Merrick

The MOTION to ADOPT Amendment 2 FAILED (4/7).

[3:28:39 PM](#)

AT EASE

[3:29:13 PM](#)

RECONVENED

Co-Chair Merrick indicated the meeting would be recessed until Friday, March 19, 2021, following the University of Alaska finance subcommittee meeting scheduled to begin at 1:30 p.m.

HB 76 was HEARD and HELD in committee for further consideration.

^RECESSED TO THE CALL OF THE CHAIR

[3:29:30 PM](#)

[Note: meeting was recessed until the following afternoon where the bill hearing continued. See separate minutes dated 3/19/21 for detail.]